



Wyoming Retirement System

Partnering to Build Financial Security for Members and their Families

Matt Mead
Governor

Ruth Ryerson
Executive Director

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TIAA-CREF Election for Higher Education Employees

1. For Information.

2. Purpose: To document management's interpretation of the provisions of the Wyoming Higher Education Retirement Act (the Act), W.S. § 21-19-101 *et seq.*, applicable to the election by certain employees of the University of Wyoming (UW) and the Wyoming community colleges (College) to participate in either the Wyoming Retirement System (WRS) or the Teacher's Insurance and Annuity Association and College Retirement Equities Fund (TIAA-CREF).

3. Background and Rationale: TIAA-CREF was established in 1969 to provide university and college employees more portability of their retirement funds. Prior to June 30, 1985, employees of UW and the Colleges paid contributions as required by the Wyoming Retirement Act into WRS based on the first \$6,600 in salary, with contributions paid to TIAA-CREF for any salary over \$6,600. As such, employees were permitted to participate in both plans simultaneously. In 1985, the Legislature amended the Act to require employees initially employed after June 30, 1985 to elect participation in one plan or the other, but not both. Those employees initially employed prior to June 30, 1985 were permitted to continue participating in both plans. The Legislature amended the Act again in 1993 to require all employees to elect, prior to January 1, 1994, to participate in one plan or the other. The Act was also amended at that time to include a provision that allowed employees that had been participating in one plan to switch to the other plan. Therefore, effective January 1, 1994, all employees who had previously participated in both WRS and TIAA-CREF, and all new employees, were required to make an election to participate in one plan only.

In the past, WRS interpreted W.S. § 21-19-102(d) of the Act to require that the initial election by an employee of UW or the Colleges to participate in either WRS or TIAA-CREF, regardless of their initial hire date and subsequent employment in the higher education system, was irrevocable during the remainder of the employee's working career as a public employee, even if the employee was subsequently employed, or re-employed, by the same or another higher education employer.

WRS now interprets the use of the term "irrevocable" in W.S. § 21-19-102(d) to be limited to the specific election made by applicable employees prior to January 1, 1994 to choose one plan or the other. In other words, while the election to participate in one plan or the other made by an applicable employee prior to January 1, 1994 is irrevocable, employees are not precluded under the Act from choosing a different plan if subsequently hired or rehired into new employment with a higher education employer.

4. Past Determinations: Due to its past interpretation of the Act, WRS has advised members and employers that any new hire that had previously made an election as part of other employment to participate in one plan or the other was bound by that initial election, even in subsequent employment. For instance, a new employee of UW who had elected TIAA-CREF as part of previous and unrelated employment at a community college would have been bound by that previous election and told that they were ineligible to join WRS. While this policy indicates a different interpretation of the statutes moving forward, WRS will not retroactively apply the new policy. The new policy will only apply to members who experience a qualifying event, as described in paragraph 5, after the date of this letter.

5. New Determinations: The Act pertains only to those contributions made to WRS and TIAA-CREF before January 1, 1994. Effective January 1, 1994, a new hire of UW or the Colleges must notify their employer of their decision to participate in *either* WRS or TIAA-CREF, but in no way can the contributions required by the Wyoming Retirement Act be split between the two plans. Once an election is made, an employee cannot change their election for the duration of the employee's tenure with that employer. This is to prevent the circumstance in which an employee might transfer back and forth between WRS and TIAA-CREF believing that one retirement plan would benefit them more than the other at any given time. If an employee terminates employment from UW or the

Colleges, however, and is subsequently hired into a new position by the same or another higher education employer, the employee must again elect to participate in either WRS or TIAA-CREF; the employee is not bound by a previous election when initially beginning new employment. However, contributions on deposit with one plan cannot be transferred to the other plan except as specifically allowed by the Wyoming Retirement Act. Any determination made under the previous interpretation will continue to be upheld.

6. Examples:

Example #1: Mary was initially hired by UW in 1981 and contributed to both WRS and TIAA-CREF. She was allowed to continue contributing to both plans until January 1, 1994, by which time she was required to elect to participate in one plan or the other, but not both. She irrevocably elected WRS and made the decision to discontinue participation in TIAA-CREF and transfer her account into WRS. She terminated her employment with UW in 1995 and was hired by a Wyoming community college. She was eligible as a new hire to elect to continue participating in WRS or begin contributing to TIAA-CREF. If she chose TIAA-CREF, she could not elect to transfer her prior WRS account into TIAA-CREF because her decision to elect WRS prior to January 1, 1994 is irrevocable.

Example #2: Sue was initially hired by UW in May 1992 and elected TIAA-CREF. She terminated her employment with UW in 1995 and was hired by the State of Wyoming, where she was required to participate in WRS. She terminated her employment with the State in 2002 and was hired by UW. She was eligible as a new hire to elect to continue participating in WRS or begin contributing again to TIAA-CREF. If she elected to continue in WRS, she was not eligible to transfer her prior TIAA-CREF account into WRS because she did not elect to do so prior to January 1, 1994.

Example #3: Frank was hired by UW in 2010 and elected TIAA-CREF. He changed jobs at UW with no break in service, and wants to change his retirement plan to WRS. Frank is not eligible to change to WRS because he has not terminated his employment with UW.

Example #4: Joe was hired by UW in 2012 and elected TIAA-CREF. He changed jobs at UW with no break in service, from an administrative position to a campus police officer. Joe now wants to change his retirement plan to WRS. Joe is not eligible to change to WRS because he has not terminated his employment with UW. Simply changing jobs with the same employer, even if it's in a different department, does not indicate a termination.

Example #5: Steve was hired by UW in 2010 and elected TIAA-CREF. He terminated employment in 2011, but subsequently returned to a position with UW in 2013 and wanted to participate in WRS. Based on WRS' prior understanding of the Act, Steve was told at the time that he was bound by his prior election of TIAA-CREF and is ineligible to participate in WRS. Even though under the current policy WRS would allow Steve to make a new election upon being hired into subsequent employment after experiencing a qualifying event as described in paragraph 5, WRS will not retroactively apply this policy. Therefore, Steve cannot change his election unless he has another qualifying event.

7. Related Issues: An employee who has funds on deposit with WRS, but who is still an employee of UW or a College is not eligible to retire or take a refund of their account balance while still employed. Retroactive retirement benefits, if applicable, would apply back to the date the employee terminated employment with UW or a College, not necessarily when they stopped making contributions to WRS. Disability benefits are not available to a member who is not contributing to WRS.

This decision does not preclude an employee from contributing on their own to a supplemental savings account through TIAA-CREF or any other provider.


David Swindell, Deputy Director

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